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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-177464

May 14, 1973

Carvoz-Carsen Corporation  
5 Daniel Road  
Fairfield, New Jersey 07006

Attention: Mr. Walter Feldman  
Vice President

Gentlemen:

Reference is made to your letter of March 8, 1973, and prior correspondence protesting any award being made under solicitation No. FPMCG-C-19367-N-11-22-72, issued by the General Services Administration (GSA).

The solicitation resulted from the cancellation of two prior solicitations, FPMCG-F-19367-A-7-6-72 and FPMCG-C-19367-RA-10-19-72. The solicitations covered the requirements of the Federal Supply Schedule for drafting and precision instruments for the period November 1, 1972, or date of award, to October 31, 1973, on an f.o.b. destination basis. In response to the original solicitation, FPMCG-F-19367-A-7-6-72, 16 bids were received. After the bids were opened the contracting officer was notified by the Inventory Management Office that an error had been made in the preparation of the solicitation in that it did not reflect the correct quantities for the various delivery destinations. Based on this information the contracting officer determined it would be in the best interest of the Government to "no award" the entire solicitation. The revised solicitation (FPMCG-C-19367-RA-10-19-72) was issued on September 29, 1972. On October 19, 1972, the 12 bids received in response to the September 29, 1972, solicitation were opened. Subsequent to this opening, GSA conducted a price analysis to determine if the bids were reasonable. This analysis indicated that during the period from October 1971 to September 1972 there was a 2-percent increase in the price of plastics and metals and a 25-percent increase in packaging, packing and transportation costs. GSA determined that an increase exceeding 30 percent of the current contract price would be excessive.

Based on the above analysis, GSA rejected 53 of the 158 items bid as being priced excessively. All of the remaining items were awarded with the exception of item 68. As 31 of the 53 items, which were rejected for excessive price, were small business set-asides, a determination was made by the contracting officer to withdraw this restriction. Therefore, a

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statement was prepared by the contracting officer and approved by a Small Business Administration (SBA) representative. However, during this period of time, the existing contract expired and a determination was made under 41 U.S.C. 252(c)(14) to negotiate for these supplies and, therefore, on November 8, 1972, the third solicitation (FFRGO-C-19367-N-11-22-72) was issued. Thereafter, you protested and while your protest was pending before this Office, SBA made the requisite determinations and made award of the items on March 19, 1973, based on urgency.

First, you protest the withdrawal of the small business set-aside determination. In this regard, it is noted that section 1-1.706-3(b) of the Federal Procurement Regulations (FPR) provides as follows:

(b) If, prior to the award of a contract involving an individual or class set-aside for small business, the contracting officer considers the procurement of the set-aside portion from a small business concern would be detrimental to the public interest (e.g., because of unreasonable price), the contracting officer may withdraw either a joint or a unilateral set-aside determination. \* \* \*

From the record before this Office, it appears that the appropriate determination required by the above regulation was made by the contracting officer and concurred in by the SBA representative. Our Office has held that a small business set-aside may be withdrawn if the prices are found to be unreasonable and that the administrative discretion in this area is broad and will not be questioned by our Office in the absence of a clear showing of abuse of such discretion. 49 Comp. Gen. 740 (1970) and B-169073, March 25, 1970.

Second, you question the propriety of the cancellation of the first two solicitations after the bids were opened and prices revealed. Section 20.2(a) of the Interim Bid Protest Procedures and Standards provides that " \* \* \* bid protests shall be filed not later than 5 [working] days after the basis for protest is known or should have been known, whichever is earlier." As the first solicitation was "no awarded" on September 14, 1972, resolicited on September 29, 1972, with bids being opened on October 19, 1972, and your protest was not filed in this Office until November 17, 1972, it was untimely.

Concerning the second solicitation which was canceled after bids were opened due to the excessive prices received on 53 items, FPR sec. 1-2.404-1(b)(5) allows for an invitation for bids to be canceled when the bids received are unreasonable. In B-172714, August 24, 1971, we held that whether a bid is reasonable as to price is a determination to be made by the procuring activity and our Office will not interfere absent a showing that the determination was arrived at arbitrarily, capriciously or in bad faith.

You state that there were substantial increases in prices because the world currency revaluation made it more attractive to offer domestic rather than foreign-made items. However, it is the position of GSA that prices on domestic goods which have been raised more than their foreign counterpart simply because the prices on the foreign goods have been increased as a result of the revaluation of world currency are unreasonable prices. Since the determination as to whether prices are reasonable is, as indicated above, an administrative determination and it is supported by the record, our Office has no legal basis to question the cancellation and resolicitation of the items in question.

Accordingly, your protest is denied.

Sincerely yours,

PAUL S. HERBLING

For the Comptroller General  
of the United States

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